

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JOHN M. SEMBER,	:	Case No. 3:16-cv-445
	:	
Plaintiff,	:	Judge Thomas M. Rose
	:	
v.	:	
	:	
BOOZ ALLEN HAMILTON	:	
ENGINEERING SERVICES, LLC,	:	
ET AL.,	:	
	:	
Defendants.	:	

**ENTRY AND ORDER GRANTING PLAINTIFF’S UNOPPOSED MOTION FOR
LEAVE TO FILE FIRST AMENDED COMPLAINT (DOC. 9) AND DENYING
AS MOOT PLAINTIFF’S MOTION FOR REMAND TO STATE COURT (DOC.
5) AND DEFENDANTS’ MOTION TO DISMISS (DOC. 7)**

This case is before the Court on Plaintiff John M. Sember’s unopposed Motion for Leave to File an Amended Complaint (“Motion for Leave”) (Doc. 9). The Court will grant the Motion for Leave because Plaintiff was permitted to amend the Complaint once as a matter of course in response to Defendants’ Motion to Dismiss and, in any event, it is unopposed. Upon granting the Motion for Leave, Plaintiff’s Motion for Remand to State Court for Improper Removal (“Motion to Remand”) (Doc. 5) and Defendants’ Motion to Dismiss (Doc. 7) become moot—as both are based on the allegations in the Complaint. The Court therefore denies both of those motions on that basis.

A. Background

On September 21, 2016, Plaintiff brought this case in the Common Pleas Court of Montgomery County, Ohio. On October 24, 2016, Defendants timely removed the case to this Court, in response to which Sember filed the Motion to Remand (Doc. 5) the case to state court.

Defendants then filed an Amended Notice of Removal (Doc. 6) and Motion to Dismiss (Doc. 7) the Complaint for failure to state a claim. Defendants' Amended Notice of Removal and Motion to Dismiss prompted Plaintiff to seek leave to file an Amended Complaint (Doc. 9) and to file an Amended Motion for Remand to State Court ("Amended Motion to Remand") (Doc. 10). Defendants have responded to the Motion for Leave and Amended Motion to Remand, both of which are ripe for review. (Docs. 11, 12.) In this Order, the Court rules on only the Motion for Leave and the motions mooted by that ruling. The Court will rule on the Amended Motion to Remand in a separate order.

B. Plaintiff's Motion for Leave to File an Amended Complaint

Plaintiff filed the Motion for Leave "[o]ut of an abundance of caution," even though he believed that he was permitted to amend his Complaint under Fed. R. Civ. P. 15(a)(1)(B). Rule 15(a)(1)(B) states that "[a] party may amend its pleading once as a matter of course" within 21 days of service of a motion under Fed. R. Civ. P. 12(b), (e), or (f). As Defendants' Motion to Dismiss was brought under Rule 12(b)(6), Plaintiff appears to be correct. A discussion could be had regarding whether a plaintiff in a removed action may amend a complaint under Rule 15(a)(1)(B) when that complaint is subject to a pending motion to remand. The Court need not engage in that discussion, however, because Defendants do not object to the filing of the Amended Complaint, provided that doing so will not waive any objections to Plaintiff's Amended Motion to Remand or any defenses to the Amended Complaint. In addition, as a practical matter, it would be a disservice to the just, speedy and inexpensive determination of this action if the Court were to deny Plaintiff's Motion for Leave and consider whether remand is appropriate based on a complaint that Plaintiff does not intend to pursue. For these reasons, the Court **GRANTS** Plaintiff's Motion for Leave and **ORDERS** Plaintiff to file the Amended Complaint within 7 days

of this Order. Defendants shall not be deemed to have waived any objections or defenses because it did not oppose Plaintiff's amendment.

C. Plaintiff's Motion for Remand to State Court and Defendants' Motion to Dismiss

Plaintiff's Motion to Remand and Defendants' Motion to Dismiss address whether the Complaint's allegations support federal jurisdiction and state a claim for relief, respectively. The filing of the Amended Complaint therefore renders these motions moot. Accordingly, the Court **DENIES** the Motion to Remand (Doc. 5) and Motion to Dismiss (Doc. 7) as moot. Of course, Defendants may move to dismiss the Amended Complaint, if they wish to do so, within the timeframe permitted under the Rules.

DONE and **ORDERED** in Dayton, Ohio, this Thursday, March 2, 2017.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE